

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

SMITHGROUP, INC., f/k/a)
SMITHGROUP JJR, INC.,)
500 Griswold Street, Suite 1700,)
Detroit, MI 48226)

Plaintiff,)

v.)

Civil Action No.: _____

SKANSKA USA BUILDING, INC.,)
89 Interpace Parkway, Suite 5,)
Parsippany, NJ 07054)

Defendant.)

Serve: Corporation Service Company R/A
7 St. Paul Street, Suite 820
Baltimore, MD 21202

COMPLAINT

SmithGroup, Inc. f/k/a SmithGroup JJR, Inc., (“SmithGroup”), by its counsel, and for its complaint against Skanska USA Building, Inc. (“Skanska”), states as follows:

Parties

1. SmithGroup is a stock corporation organized under the laws of the State of Michigan and having its principal place of business at 500 Griswold Street, Suite 1700 in Detroit, Michigan. Among other things, SmithGroup provides professional architectural and engineering design services.

2. Skanska is a stock corporation organized under the laws of the State of Delaware and having its principal place of business at 89 Interpace Parkway, Suite 5, in Parsippany, New Jersey. Among other things, Skanska is in the business of construction.

Jurisdiction and Venue

3. This action is between business entities who are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Therefore, original subject matter jurisdiction in the federal court is warranted by 28 U.S.C. § 1332 (a)(1).

4. Skanska transacts substantial business in the State of Maryland. Skanska also maintains a regional office in Rockville Maryland from which it performed the construction project that is the subject of this action.

5. Skanska entered into a contract with SmithGroup wherein SmithGroup agreed to provide certain professional design services in connection with the construction of a new headquarters building for the District of Columbia Water and Sewer Authority. *See* Exhibit A. In that contract, the parties agreed that venue for any dispute between them arising out of the contract must be brought in the state or federal court in the jurisdiction “in which the Design/Builder’s home office out of which the Project is being performed is located.” Exhibit A at Article 10.3.

6. Skanska is the Design/Builder. The home office out of which Skanska performed the project is located at 700 King Farm Road, Suite 200, Rockville Maryland in Montgomery County. *See* Exhibit A at Article 1; Article 10.3. As such, venue is proper in this Court.

Facts

7. On or about April 17, 2015, Skanska and SmithGroup entered into a contract wherein SmithGroup agreed to perform certain professional design services associated with construction of a new headquarters building for the District of Columbia Water and Sewer Authority (“Owner”). *See* Exhibit A. In the contract, Skanska agreed to pay SmithGroup \$1,661,250 for basic services exclusive of any additions to its scope of work as the work moved

forward. Exhibit A at Article 6.1.1 and Article 6.5.1. In the contract, Skanska agreed to pay SmithGroup for additional services in accordance with approved estimates and rates set forth in the contract. Exhibit A at Article 3.11.7; Article 6.5.1; and Schedule C.

8. At the time SmithGroup and Skanska executed the attached contract, the schedule called for construction of the building to be substantially complete by June 30, 2017. Skanska and the Owner subsequently agreed to extend the date for substantial completion until September 14, 2018. The project was not substantially complete until February 29, 2020.

9. Skanska, through its breach, fault, errors, acts and/or omissions, delayed substantial completion of the project from September 14, 2018 until February 29, 2020. Any delay in the substantial completion of the building was not the fault or cause of SmithGroup.

10. Between November 2017 and June 2019 Skanska directed SmithGroup to perform additional services with the understanding that SmithGroup would be paid \$229,589.47 for these additional services. SmithGroup submitted, and Skanska approved, estimates of the cost to perform these additional services. SmithGroup performed the requested and approved additional services in reliance upon receiving payment for such additional services. SmithGroup timely invoiced Skanska for the additional services and requested payment. Skanska has not paid SmithGroup for these requested additional services.

11. Skanska also directed SmithGroup to modify the Basis of Design Documents and/or the Construction Documents with the understanding that SmithGroup would be paid \$285,635.09 for their service in performing these builder-directed changes. SmithGroup submitted, and Skanska approved, estimates of the cost to perform these builder-directed changes. SmithGroup performed the requested and approved builder-directed changes in reliance upon receiving payment for such services. SmithGroup timely invoiced Skanska for

these builder-directed changes and requested payment. Skanska has not paid SmithGroup for their service in performing these builder-directed changes.

12. The contract between SmithGroup and Skanska required SmithGroup to perform certain professional services during construction, referred to as construction administration or “CA” phase services. Those services included review of certain submittals from Skanska’s trade subcontractors, responding to requests for information, issuing supplemental drawings or guidance as requested, and performing “full-time construction monitoring.” SmithGroup incurred \$405,913.20 in fees to provide CA phase services from September 14, 2018 through the actual substantial completion date on February 29, 2020. Skanska has not paid SmithGroup for its fees incurred during extended CA phase services.

13. SmithGroup has satisfied all conditions precedent to the filing of this action.

Count One – Breach of Contract

14. The factual allegations of Paragraphs 1 through 13 of this Complaint are incorporated herein by reference.

15. The contract entered into between Skanska and SmithGroup requires Skanska to pay SmithGroup for additional services in accordance with approved estimates and rates set forth in the contract. *See* Exhibit A at Article 3.11.7; Article 6.5.1; and Schedule C.

16. Between November 2017 and June 2019 Skanska directed and approved SmithGroup to perform additional services, builder directed changes, and extended CA Phase services as set forth above.

17. Skanska’s failure to pay SmithGroup for the additional services, builder directed changes, and extended CA Phase services as set forth above is a breach of the contract between the parties.

18. Skanska's breach of contract has caused SmithGroup to suffer damages in the total amount of \$921,137.76.

Count Two – Quantum Meruit

19. The factual allegations of Paragraphs 1 through 18 of this Complaint are incorporated herein by reference.

20. At the direction of Skanska, SmithGroup rendered valuable services to Skanska in performing professional services to complete additional services requested and approved by Skanska, to complete builder directed changes requested and approved by Skanska, and to complete extended CA phase services requested and approved by Skanska.

21. Skanska accepted SmithGroup's services under such circumstances as reasonably notified Skanska that SmithGroup expected to be paid by Skanska and as to make it inequitable for Skanska to retain the benefit conferred upon it by SmithGroup's services.

22. Skanska's failure to pay SmithGroup for additional services, builder directed changes, and extended CA Phase services as set forth above entitles SmithGroup to recover from Skanska as quantum meruit in the total amount of \$921,137.76.

Count Three – Promissory Estoppel

23. The factual allegations of Paragraphs 1 through 22 of this Complaint are incorporated herein by reference.

24. Skanska made a clear and definite promise to SmithGroup to pay for professional services rendered by SmithGroup for Skanska's benefit, at Skanska's request and with Skanska's approval, including professional services to complete additional services requested and approved by Skanska, to complete builder directed changes requested and approved by Skanska, and to complete extended CA phase services requested and approved by Skanska.

25. SmithGroup had a reasonable expectation that Skanska's offer to pay SmithGroup for the professional services described herein would induce SmithGroup to perform such services and in fact did induce SmithGroup to perform such services.

26. Smith Group's reliance on Skanska's promise to pay SmithGroup for professional services requested and approved by Skanska caused a detriment to SmithGroup in the total amount of \$921,137.76, which can only be avoided by the enforcement of Skanska's promise.

Prayer for Relief

Wherefore, for the foregoing reasons, SmithGroup, Inc. demands judgment against Skanska USA Building, Inc. in the amount of \$921,137.76, plus interest, fees and costs, together with such other further relief as the Court deems proper, appropriate, just, and equitable.

Dated: August 28, 2020

Respectfully submitted,

/s/ Leslie Paul Machado

Leslie Paul Machado (Bar No. 14952)

Alison C. Duffy (Md. Bar No. 21002)

O'HAGAN MEYER, PLLC

2560 Huntington Avenue, Suite 204

Alexandria, Virginia 22303

(703) 775-8607 (phone)

(804) 403-7110 (facsimile)

lmachado@ohaganmeyer.com

aduffy@ohaganmeyer.com

Stephan F. Andrews (*pro hac* application to be filed)

James W. Walker (*pro hac* application to be filed)

O'HAGAN MEYER, PLLC

411 East Franklin Street, 5th Floor

Richmond, Virginia 23219

804.403.7100 (phone)

804.403.7110 (facsimile)

SAndrews@ohaganmeyer.com

jwalker@ohaganmeyer.com